
FIRST SUPERVISORY NOTICE

To: **Enterprise The Business Credit Union Limited**

Of: **75 Queen Street
Morecambe
Lancashire
LA4 5EN**

FSA Reference Number: **213820**

Dated: **14 September 2011**

ACTION

1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has varied the permission granted to Enterprise The Business Credit Union Limited (“EBCU”), pursuant to Part IV of the Act (“EBCU’s permission”), by removing its only regulated activity with effect from close of business on 21 September 2011. Accordingly, EBCU’s permission will no longer include the regulated activity of accepting deposits with effect from close of business on 21 September 2011.
2. The FSA has further varied EBCU’s permission pursuant to section 43 of the Act by including the following requirements with effect from close of business on 21 September 2011, namely that EBCU must not:
 - (1) make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
 - (2) redeem any member’s shares;
 - (3) effect any share to loan transfers;
 - (4) repay any deposits; or

- (5) without the written consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except to pay expenses incurred in the ordinary course of EBCU's business.
3. For the avoidance of doubt, the expenses referred to in paragraph 2(5) do not include gifts, or payments of unusual or significant amounts to EBCU's employees or officers or any persons connected to them.
4. The FSA has also varied EBCU's permission by including the following requirements, namely that after 21 September 2011 and before 06 October 2011 EBCU must:
 - (1) advise in writing all members of EBCU that it is no longer permitted by the FSA to carry on accepting deposits and of the other restrictions placed upon it by the FSA; and
 - (2) provide the FSA with a copy of the written advice sent to all members for its regulated activity pursuant to paragraph 4(1) above, together with a list of all members to whom such advice has been sent.

REASONS FOR ACTION

5. On the basis of the facts and matters described below, EBCU is failing and will continue to fail to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, EBCU has failed to maintain positive capital, and presents a risk to consumers by continuing to be permitted to conduct the regulated activity it carries on.
6. The FSA considers that EBCU should not be permitted to accept new deposits nor should it make any further loan advances or redeem any membership shares, when it has failed to maintain adequate capital.
7. The FSA considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take effect from close of business on 21 September 2011.

FACTS AND MATTERS RELIED ON

8. EBCU is a version 1 credit union. In its Quarterly Return to the FSA for the period ended 30 June 2011, EBCU reported that it had 230 members and no juvenile depositors.
9. The latest audited financial information available to the FSA reported that EBCU had negative capital of £16,360 as at 30 September 2010. EBCU has had negative capital since September 2009. In its Quarterly Return to the FSA for the period ended 30 June 2011, EBCU reported negative capital of £19,156. EBCU has failed to rectify its negative capital position, despite having had a reasonable opportunity to do so.

FAILINGS

10. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
11. From the facts and matters described above the FSA, having regard to its regulatory objectives, has identified that:
 - EBCU is in breach of CRED 8.3.1R by failing to maintain a positive amount of capital at all times and therefore the amount saved by its members is worth less than they deposited;
 - this failing is material in relation to the regulated activity for which EBCU has permission and it therefore fails to satisfy Principle 4 (Financial prudence) and Threshold Condition 4 (Adequate resources); and
 - the risk of loss or other adverse effect on consumers because of EBCU's failings causes the FSA to have serious concerns about EBCU such that the exercise of the FSA's own-initiative powers to vary EBCU's permission with effect from close of business on 21 September 2011 is an appropriate response to those concerns.

PROCEDURAL MATTERS

Decision Maker

12. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Deputy Chairman of the Regulatory Decisions Committee.
13. This First Supervisory Notice is given to EBCU under section 53(4) and in accordance with section 53(5) of the Act, and is being served on EBCU at its principal place of business last notified to the FSA. The following statutory rights are important.

The Tribunal

14. EBCU has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, EBCU has 28 days from the date on which this First Supervisory Notice is given to EBCU to refer the matter to the Tribunal.
15. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by EBCU and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are:

The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).

16. Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

17. EBCU should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Alexander Banerjea at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

18. EBCU has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If EBCU wishes to make written representations it must do so by 20 October 2011 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Adam Taylor, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If EBCU wishes to make oral representations, it should inform the FSA of its intention to do so by 26 September 2011. If EBCU does not notify the FSA by 26 September 2011, it will not, other than in exceptional circumstances, be able to make oral representations.

Confidentiality and publicity

19. EBCU should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). EBCU should also note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

FSA contacts

20. For more information concerning this matter generally, EBCU should contact Alexander Banerjea at the FSA (direct line: 020 7066 7206 / fax: 020 7066 7207).
21. If EBCU has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Adam Taylor (direct line: 020 7066 2546).

Andrew Long
Deputy Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO ENTERPRISE THE BUSINESS CREDIT UNION LIMITED ON 14 SEPTEMBER 2011

RELEVANT STATUTORY PROVISIONS

1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
2. Section 45 of the Act authorises the FSA to exercise the following powers:
 - (1) to vary an authorised person's permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions;
 - (2) to vary such a permission by removing a regulated activity from those for which the permission is given; and
 - (3) to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
3. Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.
4. Section 53(3) of the Act allows such variations to take effect immediately if the FSA reasonably considers that it is necessary for the variations to take effect immediately.
5. Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states:

“The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”

RELEVANT HANDBOOK PROVISIONS

6. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the "Handbook"). The main provisions relevant to the action specified above are set out below.

Relevant Principle

7. Principle 4 (Financial prudence) as set out in the FSA's Principles for Businesses (the "Principles") in the Handbook requires that a firm maintain adequate financial resources.

Relevant Rules and Guidance

8. FSA Rule CRED 8.3.1R in the Credit Unions Sourcebook in the Handbook (“CRED”)states:

“A *version 1 credit union* must at all times maintain a positive amount of capital.”

9. The guidance in CRED 8.3.3G states that:

“CRED 8.3.1R implements the principle that every pound saved by a depositor with a *credit union* should always be worth at least a pound.”

10. CRED 5.2.4G allows the FSA to vary a credit union’s Part IV permission on its own initiative if it appears that the credit union is failing, or is likely to fail, to satisfy the Threshold Conditions.

Guidance concerning the relevant Threshold Condition

11. Guidance on Threshold Condition 4 (Adequate Resources) is set out in Chapter 2.4 of the Part of the Handbook entitled Threshold Conditions (“COND”).
12. COND 2.4.1UK reproduces the relevant statutory provision that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
13. COND 2.4.2G(2) in giving guidance on the interpretation of “adequate resources”, defines the term “adequate” as meaning sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, non-financial resources and means of managing its resources, capital, provisions against liabilities, holdings of or access to cash and other liquid assets.
14. COND 2.4.4G(3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

OTHER RELEVANT REGULATORY PROVISIONS

15. The FSA’s policy in relation to the use of its enforcement powers is set out in the Enforcement Guide (“EG”).

The FSA’s policy for exercising the own-initiative power under section 45 of the Act to vary a Part IV permission – EG 8

16. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm.

17. EG 8.5 provides that the circumstances in which the FSA will consider varying a firm's Part IV permission include those where the FSA has serious concerns about the firm or about the way its business is being or has been conducted.
18. EG 8.5(1)(a) specifies that the circumstances in which the FSA will consider exercising its own-initiative power include where a firm's financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on.
19. EG 8.9 includes among the factors which will determine whether the urgent exercise of the FSA's own-initiative power is an appropriate response, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue.